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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,110	09/18/2003	Anthony Fox	2002461.ORI	7140
23595	7590	09/20/2004	EXAMINER	
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			NGUYEN, JIMMY T	
			ART UNIT	PAPER NUMBER
			3725	

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/666,110

Applicant(s)

FOX, ANTHONY

Examiner

Jimmy T Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01162004
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Election/Restrictions

This application contains claims directed to the following patentably distinct species of the claimed invention:

Group I. The species in figure 6.

Group II. The species in figures 8-9.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1-12 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the

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prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Attorney Thomas J. Nikolai on September 15, 2004 a provisional election was made without traverse to prosecute the invention of Group I, readable on claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claim 14 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

An action on the merits of claims 1-13 follows.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, line 10, there is no antecedent basis for "the compaction plate" in the claim.

Regarding claim 8, lines 1-2, there is no antecedent basis for "said means for automatically pivoting the hinged panel" in the claim as it is depending upon claim 5. For the purpose of examination, claim 8 is treated as it is depending upon claim 6.

Regarding claim 11, line 2, there is no antecedent basis for "the electric motor" in the claim as it is depending upon claim 1. Further, it is unclear what structural interrelationship exists between the electric motor and other elements of the compactor as claimed in the preceding claim 1. For the purpose of examination, claim 11 is treated as it is depending upon claim 7.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Tashman (US 4,130,054).

Regarding claims 1-3, Tashman discloses a refuse compactor comprising: a frame having a base (30) and a pair of upward extending structural members (see fig. 4) affixed to the base along opposed side edges thereof (fig. 4); a horizontal cross member (92) extending between the pair of structural members at upper ends thereof (fig. 4); a compaction plate assembly including a one piece platen (88) pivotally affixed to a support member (114) for rotation about a horizontal axis (fig. 2), a compaction plate driver (119) operatively disposed between the horizontal cross member and the support member (fig. 4); means for pivoting the platen as claimed (fig. 2 and col. 6, lines 14-59); means for biasing the platen toward a horizontal position (132); and means for releasably

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locking (110, 112, 113) the platen in the horizontal position during the down ward movement of the compaction plate assembly.

Regarding claim 12, Tashman discloses a wheeled cart (12, 53) supported a removable container (col. 9, line 45) into which refuse can be deposited and compacted.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brutsman (US 4,552,061), in view of Gawley et al. (hereinafter "Gawley") (US 6,367,377).

Regarding claim 4, Brutsman discloses a compactor comprising: a frame having a base (23) and a pair of extending structural members (15); a horizontal cross member (76); a compaction plate assembly having a platen (70, 72) pivotally affixed to a supported member (36), a compaction plate driver (26); and mean for pivoting the platen (74), a pair of sidewalls, a rear wall (figs. 1 and 2), a door member (40) and a refuse receiving opening (fig. 2). Brutsman does not disclose the specific location of the door member and the refuse receiving opening as claimed. The patent to Gawley teaches that it is old and well known in the refuse compacting art to provide a compactor (fig. 1) that has a door member (24) which includes a refuse opening formed through it (fig. 1), wherein the door member formed a front wall that is parallel to a rear wall (fig. 1).

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Gawley teaches this construction of the door member in order to receive the refuse and to remove compacted refuse through the front part of the compactor (fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Brutsman, with the type of front door member at the location as taught by Gawley, in order to receive the refuse and to remove compacted refuse through the front part of the compactor.

As to the platen is being a one piece platen, Brutsman discloses his platen having two pieces (70, 72) that are connected together and pivoting about the support member as a one piece platen (col. 5, lines 35-48). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form Brutsman's two pieces platen into a one piece platen, since forming in one piece of an article which was formerly been formed in two pieces and put together involves only routine skill in the mechanical art.

Regarding claims 5 and 6, Brutsman discloses a hinged panel (2) and means for automatically pivoting (52, col. 5, lines 62-64) the hinged panel upon activation of a motor (44).

Regarding claim 7, Brutsman discloses a switch (19) is being used to activate the motor upon approach of a patron. Brutsman does not disclose the activation of the motor is being a motion sensor. The patent to Gawley teaches that it is old and well known in the refuse compacting art to provide a compactor (fig. 1) that has a motion sensor (22) for activating a motor (202) to open a refuse receiving door (26) upon approach of an object. Therefore, it would have been obvious matter of choice to provide Brutsman with the

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type of sensing means, as taught by Gawley, so as to activate the motor upon approach of a patron.

Regarding claim 8, the hinged panel inherently generally parallel to the platen when the platen is in an inclined position.

Regarding claim 9, Brutsman discloses means for preventing movement (60) of the hinged panel.

Regarding claim 10, Brutsman discloses an electrical switch (104) for preventing operation of the compaction plate driver when door member is ajar (col. 7, lines 50-54).

Claim 11, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Brutsman and Gawley et al., as applied to claim 7 above, further in view of Harmony Enterprises, Inc. (hereinafter "HEI").

Brutsman, as modified by Gawley, discloses the invention substantially as claimed except for means for playing an audio message upon actuation of the electric motor/hinged panel. The prior art reference of HEI teaches that it is old and well known in the refuse compacting art to provide a compactor with a means for playing an audio message upon actuation of a hinged panel/door (see page 8, first paragraph). Gawley teaches this audio feature to send a promotion message (i.e. thank you) to a patron of a restaurant facility (see page 8, first paragraph). Therefore, it would have been obvious matter of choice to provide Brutsman with a means for playing an audio message, as taught by HEI, in order to send a promotion message to a patron.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brutsman and Gawley et al., as taken alone, or further in view of Fox (US 5,517,907). Brutsman discloses that the electric switch (104) is being connected with the compaction plate driver system (100) (fig. 4). As to the compaction plate driver is being hydraulically driven, Brutsman discloses that his compaction plate driver is being mechanically driven (fig. 2). However, it would have been an obvious matter of design choice to have a hydraulic compaction plate driver, since applicant has not disclosed that the hydraulically driven system solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the mechanical compaction plate driver as disclosed Brutsman.

Further, the patent to Fox, in a closely related refuse compacting art, can be applied to show a refuse compactor having a hydraulic compaction plate driver that includes a hydraulic ram (40), an electric motor (92) to drive a hydraulic pump (94). Therefore, it would have been an obvious matter of design choice to have a hydraulic compaction plate driver, as taught by Fox, to drive the platen, since such drive system is old and well-known in the refuse compacting art and both drive systems work equally as well, one skilled in the art would make a choice for convenience or economic reason.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art listed on the attached PTO 892 are cited to show relevant refuse compactors.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy T Nguyen whose telephone number is (703) 305-5304. The examiner can normally be reached on Mon-Thur 8:00am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen Ostrager can be reached on (703) 308-3136. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JTNguyen
September 15, 2004



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